

(B) Aircraft shall visually survey the target and buffer zone for marine mammals prior to and during the exercise. The survey of the impact area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at the slowest safe speed. Release of ordnance through cloud cover is prohibited; aircraft must be able to actually see ordnance impact areas.

(C) A buffer zone of a 5,100-yard (4,663-m) radius shall be established around the intended target zone. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

(D) At-sea BOMBEXs using live ordnance shall occur during daylight hours only.

(ii) Small Arms Training—Explosive hand grenades (such as the MK3A2 grenades):

(A) Lookouts shall visually survey for marine mammals prior to and during exercise.

(B) A 200-yd (182-m) radius buffer zone shall be established around the intended target. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

(b) [Reserved]

§ 218.34 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.36 for activities described in § 218.30(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.30(c) is thought to have resulted in the mortality or serious injury of any marine mammals, or in any take of marine mammals not identified in § 218.31(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the GOMEX Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below.

(1) Vessel or aerial surveys.

(i) The Holder of this Authorization shall visually survey a minimum of 1 explosive event per year. One of the vessel or aerial surveys should involve professional trained marine mammal observers (MMOs). If it is impossible to conduct the required surveys due to lack of training exercises, the missed annual survey requirement shall roll into the subsequent year to ensure that the appropriate number of surveys (*i.e.*, total of five) occurs over the 5-year period of effectiveness of this subject.

(ii) When operationally feasible, for specified training events, aerial or vessel surveys shall be used 1–2 days prior to, during (if reasonably safe), and 1–5 days post detonation.

(iii) Surveys shall include any specified exclusion zone around a particular detonation point plus 2,000 yards beyond the border of the exclusion zone (*i.e.*, the circumference of the area from the border of the exclusion zone extending 2,000 yards outwards). For vessel-based surveys a passive acoustic system (hydrophone or towed array) could be used to determine if marine mammals are in the area before and/or after a detonation event.

(iv) When conducting a particular survey, the survey team shall collect:

- (A) Location of sighting;
- (B) Species (if not possible, indicate whale, dolphin or pinniped);
- (C) Number of individuals;
- (D) Whether calves were observed;
- (E) Initial detection sensor;
- (F) Length of time observers maintained visual contact with marine mammal;
- (G) Wave height;
- (H) Visibility;
- (I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after;
- (J) Distance of marine mammal from actual detonations (or target spot if not yet detonated);

(K) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction;

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(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long; and

(M) If observation occurs while explosives are detonating in the water, indicate munitions type in use at time of marine mammal detection.

(2) Passive acoustic monitoring—the Navy shall conduct passive acoustic monitoring when operationally feasible.

(i) Any time a towed hydrophone array is employed during shipboard surveys the towed array shall be deployed during daylight hours for each of the days the ship is at sea.

(ii) The towed hydrophone array shall be used to supplement the ship-based systematic line-transect surveys (particularly for species such as beaked whales that are rarely seen).

(iii) The array should have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes. The use of two simultaneously deployed arrays can also allow more accurate localization and determination of diving patterns.

(3) Marine mammal observers on Navy platforms:

(i) As required in §218.34(c)(1), MMOs who are selected for aerial or vessel surveys shall, to the extent practicable, be placed on a Navy platform during the exercises being monitored.

(ii) The MMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) MMOs shall not be placed aboard Navy platforms for every Navy training event or major exercise. Instead, MMOs should be employed during specifically identified opportunities deemed appropriate for data collection efforts. The events selected for MMO participation shall take into account safety, logistics, and operational concerns.

(iv) MMOs shall observe from the same height above water as the lookouts.

(v) The MMOs shall not be part of the Navy's formal reporting chain of command during their data collection ef-

forts; Navy lookouts shall continue to serve as the primary reporting means within the Navy chain of command for marine mammal sightings. The only exception is that if an animal is observed within the shutdown zone that has not been observed by the lookout, the MMO shall inform the lookout of the sighting and the lookout shall take the appropriate action through the chain of command.

(vi) The MMOs shall collect species identification, behavior, direction of travel relative to the Navy platform, and distance first observed. Information collected by MMOs should be the same as those collected by the survey team described in §218.34(c)(1)(iv).

(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(e) Annual GOMEX Range Complex Monitoring Plan Report—The Navy shall submit a report annually on March 1 describing the implementation and results (through January 1 of the same year) of the GOMEX Range Complex Monitoring Plan. Data collection methods shall be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the MMOs collecting marine mammal data pursuant to the GOMEX Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in §218.34(c)(1)(iv). The GOMEX Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from GOMEX Range Complex and multiple range complexes.

(f) Annual GOMEX Range Complex Exercise Report—The Navy shall provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they shall provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(1) Total annual number of each type of explosive exercise (of those identified as part of the "specified activity" in this final rule) conducted in the GOMEX Range Complex.

(2) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(g) GOMEX Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during the GOMEX Range Complex exercises for which annual reports are required (Annual GOMEX Range Complex Exercise Reports and GOMEX Range Complex Monitoring Plan Reports). This report shall be submitted at the end of the fourth year of the rule (February 2015), covering activities that have occurred through August 1, 2014.

(h) The Navy shall respond to NMFS comments and requests for additional information or clarification on the GOMEX Range Complex Comprehensive Report, the Annual GOMEX Range Complex Exercise Report, or the Annual GOMEX Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(i) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the

Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.35 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103 of this chapter) conducting the activity identified in § 218.30(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.36 or a renewal under § 218.37.

§ 218.36 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 218.37.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 218.37 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§ 216.106 and 218.36 of this chapter for the activity identified in § 218.30(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.35 shall be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 218.34; and